

## House Bill 92

By: Representatives Jacobs of the 80<sup>th</sup>, Ramsey of the 72<sup>nd</sup>, Lunsford of the 110<sup>th</sup>, Levitas of the 82<sup>nd</sup>, Everson of the 106<sup>th</sup>, and others

A BILL TO BE ENTITLED  
AN ACT

1 To amend Title 40 of the Official Code of Georgia Annotated, relating to motor vehicles and  
2 traffic, so as to provide that any person convicted for the first time of the offense of driving  
3 under the influence of alcohol with an alcohol concentration of 0.15 grams or more shall be  
4 required to undergo a clinical evaluation and possible treatment; to provide for enhanced  
5 penalties for such persons; to amend Code Section 42-8-111 of the Official Code of Georgia  
6 Annotated, relating to court ordered installation of ignition interlock devices, DUI Alcohol  
7 or Drug Use Risk Reduction Program, notice of requirements, and driver's license fee, so as  
8 to provide for an additional provision of probation; to repeal conflicting laws; and for other  
9 purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 Title 40 of the Official Code of Georgia Annotated, relating to motor vehicles and traffic, is  
13 amended by revising Code Section 40-5-63.1, relating to clinical evaluation and substance  
14 abuse treatment programs for certain offenders, as follows:

15 "40-5-63.1.

16 In addition to any and all other conditions of license reinstatement, issuance, or restoration  
17 under Code Section 40-5-58, 40-5-62, or 40-5-63, any person with one conviction for  
18 violating Code Section 40-6-391 with an alcohol concentration of 0.15 grams or more and  
19 any person with two or more convictions for violating Code Section 40-6-391 within ten  
20 years, as measured from the dates of previous arrests for which convictions were obtained  
21 to the date of the current arrest for which a conviction is obtained, shall be required to  
22 undergo a clinical evaluation and, if recommended as a part of such evaluation, shall  
23 complete a substance abuse treatment program prior to such license reinstatement,  
24 issuance, or restoration; provided, however, that such evaluation and treatment shall be at  
25 such person's expense except as otherwise provided by Code Section 37-7-120. Acceptable  
26 proof of completion of such a program shall be submitted to the department prior to license

reinstatement, issuance, or restoration. For purposes of this Code section, a plea of nolo contendere to a charge of violating Code Section 40-6-391 and all prior accepted pleas of nolo contendere within ten years, as measured from the dates of previous arrests for which convictions were obtained or pleas of nolo contendere were accepted to the date of the current arrest for which a plea of nolo contendere is accepted, shall be considered and counted as convictions."

## SECTION 2.

Said title is further amended by revising paragraphs (1) and (2) of subsection (c) of Code Section 40-6-391, relating to driving under the influence of alcohol, drugs, or other intoxicating substances, penalties, publication of notice of conviction for persons convicted for the second time, and endangering a child, as follows:

"(1) ~~First~~ Except as otherwise provided in paragraph (2) of this subsection, for a first conviction with no conviction of and no plea of nolo contendere accepted to a charge of violating this Code section within the previous ten years, as measured from the dates of previous arrests for which convictions were obtained or pleas of nolo contendere were accepted to the date of the current arrest for which a conviction is obtained or a plea of nolo contendere is accepted:

(A) A fine of not less than \$300.00 and not more than \$1,000.00, which fine shall not, except as provided in subsection (g) of this Code section, be subject to suspension, stay, or probation;

(B) A period of imprisonment of not fewer than ten days nor more than 12 months, which period of imprisonment may, at the sole discretion of the judge, be suspended, stayed, or probated, except that if the offender's alcohol concentration at the time of the offense was 0.08 grams or more, the judge may suspend, stay, or probate all but 24 hours of any term of imprisonment imposed under this subparagraph;

(C) Not fewer than 40 hours of community service, except that for a conviction for violation of subsection (k) of this Code section where the person's alcohol concentration at the time of the offense was less than 0.08 grams, the period of community service shall be not fewer than 20 hours;

(D) Completion of a DUI Alcohol or Drug Use Risk Reduction Program. The sponsor of any such program shall provide written notice of the department's approval of the program to the person upon enrollment in the program;

(E) A clinical evaluation as defined in Code Section 40-5-1 and, if recommended as a part of such evaluation, completion of a substance abuse treatment program as defined in Code Section 40-5-1; provided, however, that in the court's discretion, such evaluation may be waived; and

(F) If the person is sentenced to a period of imprisonment for fewer than 12 months, a period of probation of 12 months less any days during which the person is actually incarcerated;

(2) For ~~the~~ a first conviction with an alcohol concentration of 0.15 grams or more and for a second conviction within a ten-year period of time, as measured from the dates of previous arrests for which convictions were obtained or pleas of nolo contendere were accepted to the date of the current arrest for which a conviction is obtained or a plea of nolo contendere is accepted:

(A) A fine of not less than \$600.00 and not more than \$1,000.00, which fine shall not, except as provided in subsection (g) of this Code section, be subject to suspension, stay, or probation;

(B) A period of imprisonment of not fewer than 90 days and not more than 12 months. The judge shall probate at least a portion of such term of imprisonment, in accordance with subparagraph (F) of this paragraph, thereby subjecting the offender to the provisions of Article 7 of Chapter 8 of Title 42 and to such other terms and conditions as the judge may impose; provided, however, that the offender shall be required to serve not fewer than 72 hours of actual incarceration;

(C) Not fewer than 30 days of community service;

(D) Completion of a DUI Alcohol or Drug Use Risk Reduction Program. The sponsor of any such program shall provide written notice of the department's approval of the program to the person upon enrollment in the program;

(E) A clinical evaluation as defined in Code Section 40-5-1 and, if recommended as a part of such evaluation, completion of a substance abuse treatment program as defined in Code Section 40-5-1; and

(F) A period of probation of 12 months less any days during which the person is actually incarcerated;"

### SECTION 3.

Code Section 42-8-11 of the Official Code of Georgia Annotated, relating to court ordered installation of ignition interlock devices, DUI Alcohol or Drug Use Risk Reduction Program, notice of requirements, and driver's license fee, is amended by revising subsection (a) as follows:

"(a) In addition to any other provision of probation, upon a first conviction of a resident of this state for violating Code Section 40-6-391 with an alcohol concentration of 0.15 grams or more and upon a second or subsequent conviction of a resident of this state for violating Code Section 40-6-391 within five years, as measured from the dates of previous arrests for which convictions were obtained to the date of the current arrest for which a

conviction is obtained, for which such person is granted probation, the court shall order as conditions of probation that:

(1) Such person shall have installed and shall maintain in each motor vehicle registered in such person's name throughout the applicable six-month period prescribed by subsection (b) of Code Section 42-8-112 a functioning, certified ignition interlock device, unless the court exempts the person from the requirements of this paragraph based upon the court's determination that such requirements would subject the person to undue financial hardship; and

(2) Such person shall have installed and shall maintain in any other motor vehicle to be driven by such person during the applicable six-month period prescribed by subsection (b) of Code Section 42-8-112 a functioning, certified ignition interlock device, and such person shall not during such six-month period drive any motor vehicle whatsoever that is not so equipped.

For the purposes of this subsection, a plea of nolo contendere shall constitute a conviction; and a conviction of any offense under the law of another state or territory substantially conforming to any offense under Code Section 40-6-391 shall be deemed a conviction of violating said Code section."

#### **SECTION 4.**

All laws and parts of laws in conflict with this Act are repealed.